Supreme Court, U.S.
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In the

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1481

AMERICAN MOTORISTS INSURANCE COMPANY,
Appellant,

v.

VIRGIL B. STARNES,
Appellee.

MOTION TO DISMISS

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To the Honorable Supreme Court of the United States of America:

STATEMENT OF THE NATURE AND RESULT OF THE CASE

Appellant's statement of the facts is substantially correct.

JURISDICTION

In 1963 the Houston Court of Civil Appeals in a lengthy and well-reasoned opinion, *Commercial Insurance Co. of Newark, N.J. v. Adams*, 366 S.W. 2d 801 (Tex. Civ. App. writ ref'd), later approved by the Supreme Court of Texas, analyzed all the authorities relied upon by Appellant and

concluded that the Rule announced by this Honorable Court in *Metropolitan Casualty Insurance Company of New York v. Brownell*, 294 U.S. 580, 55 S. Ct. 538, controlled the question raised by Appellant. That Rule is "A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of the facts reasonably may be conceived to justify it". This Honorable Court again stated this Rule in *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 79 S. Ct. 437, as follows: "If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of differences or policy, there is no denial of the equal protection of the law".

The Houston Court then presented four sets of facts which they reasonably conceived to justify Subdivision 27 of Article 1995 V.T.C.S. These are briefly summarized as follows:

(1) Since Subdivision 27 requires that the defendant maintain an agency or representative in the County wherein it is sued, the defendant is insured that the County of trial is one where the defendant corporation is known and with which it is familiar. If the foreign corporation is a plaintiff, the provisions of Subdivision 27 are fully available to it.

(2) If the foreign corporation was not authorized to do business in Texas but in fact was doing so it would place an onerous burden upon the plaintiff to ascertain its principal office and the County in which it is located. In addition, if the foreign corporation is authorized to do business in this State it may well designate its principal office in a County far removed from the population centers of this State, in which it conducts little or no business. The real "principal office" of any foreign corporation, naturally, is going to be in the State of its incorporation. Therefore, the foreign corporation unlike a domestic corporation is permitted to choose any city in the State of Texas as its principal place of business.

(3) Even though foreign corporations submit to a certain degree of control by qualifying to do business in Texas, the State is still unable to give its citizens the same assurance of effective redress for injuries committed by foreign corporations as it can in the case of domestic corporations.

(4) Further justification is the fact that the Texas Legislature may well have intended to spread litigation involving foreign corporations among the different courts of the State in order to alleviate the overcrowded dockets of the metropolitan courts.

Appellant in his jurisdictional statement additionally complains that because Subdivision 27 does not require a plaintiff to prove by a preponderance of the evidence the elements of its cause of action at the venue hearing, foreign corporations are deprived of discovery of plaintiff's case as well as the opportunity to prevent the case from developing into a "cumbersome, time-consuming lawsuit". This is patently false. The Trial Court in a venue hearing can enter only two alternative Orders. Those are: (1) Over-rule the defendant's plea of privilege, or (2) Sustain the plea of privilege and enter an Order transferring the cause to the County requested by the defendant. The Court is absolutely without power to dispose of the merits of the case by this hearing. One of the primary practical purposes of the venue hearing relied upon by defendants is that of delay and hopefully removing the cause to a Court with a more crowded docket, further postponing any trial on the merits. Texas now has very liberal rules of discovery much like those in the Federal system which are fully available to any defendant whether a natural person or a foreign corporation. Appellant further complains that since either party is entitled to a trial by jury to determine the venue facts, that a foreign corporation is deprived of the opportunity to obtain a preliminary assessment by the jury of the plaintiff's creditability. In this connection, it should be pointed out that the instant case was heard by the Trial Court and the defendant made no request for a jury. It should be further noted that a cause of action may well be proved without the plaintiff being present.

Appellee respectfully urges this Honorable Court to give its careful attention to the Adams case, *supra*, and the arguments therein presented. The reasoning of this decision clearly shows that no substantial Federal question has been presented by Appellant and therefore this Appeal should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of September, 1975, three copies of the foregoing Motion to Dismiss were mailed to Joel W. Westbrook, 1910 National Bank of Commerce Building, San Antonio, Texas 78205, attorney for Appellant. I further certify that all parties required to be served have been served.

FRED HORNER
Fred Horner